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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Thirteenth periodic reports of States parties due in 1996

Addendum

Peru*

[6 January 1998]

* This document contains the twelfth and thirteenth periodic reports, due on 29 October 1994 and 1996 respectively. The eighth, ninth, tenth and eleventh periodic reports of Peru and the summary records of the meetings at which the Committee considered those reports are contained in documents CERD/C/225/Add.3 and CERD/C/SR.1083 and SR.1084.

The information submitted by Peru in accordance with the consolidated guidelines for the initial part of the reports of States parties appears in core document HRI/CORE/1/Add.43/Rev.1.

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Introduction

1. The Peruvian State is a party to the International Convention on the Elimination of All Forms of Racial Discrimination and hence, under article 9, paragraph 1, of the Convention, undertakes to submit a report on the legislative, judicial, administrative or other measures which it has adopted and which give effect to the provisions of the Convention.

2. The Committee on the Elimination of Racial Discrimination noted that it had not received the twelfth and thirteenth periodic reports, which Peru was due to present on 30 October 1994 and 1996 respectively. These are being combined in a single document. Accordingly, on the basis of document CERD/C/70/Rev.3, containing the general guidelines regarding the form and contents of reports to be submitted by States parties, the following report is hereby submitted on the elimination of all forms of racial discrimination.

I. GENERAL

3. Peru is a democratic, social, independent and sovereign republic. The State is an indivisible whole. Its Government is unitary, representative and decentralized and is organized in accordance with the principle of the separation of powers. Its official languages are Spanish and also, in areas where their use predominates, Quechua, Aymara and the other indigenous languages, in accordance with the law. The capital is the city of Lima and the historical capital is the city of Cuzco.

4. The territory falls into three natural regions: the coastal strip, the sierra and the jungle. Politically, it is divided into regions, departments, provinces and districts. Its area is approximately 1,285,216 km^2. According to the National Population Census, the population was 22,639,443 in 1993, and from the projections made on the basis of the 1993 results, it should now be 23,947,000, of whom 52 per cent are on the coast, 36 per cent in the sierra and 12 per cent in the jungle.

INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

II. BRIEF DESCRIPTION OF THE POLICY ADOPTED TO ELIMINATE RACIAL DISCRIMINATION

5. Owing to the fact that any reference to the racial make-up of the population has been dropped from the census, it is difficult to give a complete ethnic breakdown of the country's population, particularly as regards the percentages of the population who are black, of Asian origin, of mixed race and white. Nevertheless, there is information to the effect that 80.3 per cent of the population have Spanish as their mother tongue, 16.5 per cent Quechua, 3.0 per cent another indigenous language and 0.2 per cent a foreign language.

6. As far as the indigenous communities are concerned, in 1993 the first Census of Indigenous Communities in Peruvian Amazonia was carried out, as part of the National Population and Housing Censuses. According to the results obtained, the total population of the indigenous communities is 299,218,

consisting of the population actually counted in the census, calculated at 239,674, and the estimated population, calculated at 59,544 (people living in inaccessible communities, who could not be counted).

7. In accordance with these facts, the Peruvian Constitution of 1993 explicitly recognizes the multi-ethnic and multi-cultural nature of the Peruvian nation. It also recognizes the legal existence of the peasant and indigenous communities, granting them legal personality and guaranteeing respect for their cultural identity. It recognizes the right of every Peruvian to use his own language in dealing with any authority; it encourages bilingual and intercultural education; in addition to Spanish, it accepts as official languages, Quechua, Aymara and the other indigenous languages in areas where their use predominates; and it gives the authorities of peasant and indigenous communities the right to exercise jurisdictional functions within their territory in accordance with customary law.

8. The communities' relationship with Peruvian society, the State and other elements has been irregular throughout history, and until recently the nation had not really recognized their presence and active role in supporting fragile ecosystems.

9. The last three decades have been a time of change for almost the whole Amazonian region, and the response of the indigenous peoples has been to seek new forms of organization.

10. The indigenous peoples had to come up with new organizations and produce leaders to face up to the new challenges endangering their territorial and cultural integrity, establishing a solid network which would make it possible to expedite the organizational process under new arrangements, giving it a content of its own. This included occasions when they were required to formalize their status as indigenous communities.

11. A consensus has thus been arrived at on the overall nature of their needs. Efforts have been intensified to secure legal recognition of their communities and their title to their lands, and new strategies have been developed for running bilingual education programmes and their own health-care services and attempting to raise their incomes through communal marketing networks. This has involved a vigorous process of cultural revitalization and recovery.

12. All this effort has required an intensive process of training leaders and giving them a course in how to handle relations with various agencies in the towns and regions and even in the capital. In this way the State has provided and opened up certain areas which have enabled indigenous peoples to negotiate better conditions or guarantees for attention to their needs.

13. In the indigenous peoples' organizational process, due account has to be taken of the interrelationship between the affirmation of their cultural identity and that of their civic rights. An important advance in this process has been the growing participation of the Amazonian Indians in electoral processes, including the victory of indigenous mayors in various municipal districts and provinces where the indigenous population had been considered a minority or treated as marginal.

14. One of the positive aspects to be noted in these organizational developments was the intensive interaction between leaders of different indigenous peoples, something that had been absent in previous decades, except for contacts between the leaders of indigenous peoples who were neighbours or belonged to the same region. Similarly, the leaders of communities and federations, together with the State and representatives of international financial agencies, have arranged access to technical and economic resources for the execution of projects relating to training, land titles, education and production.

15. One of the most important achievements on the part of the State has been the issue of titles to land, with the support of various development finance agencies. This process has been conducted with the assiduous participation of indigenous organizations and grass-roots communities, which were involved in the negotiations, in the work of financial management and in demarcation, and in this connection there has been a great deal of community participation, which has reduced costs.

16. Another advance of great importance is the establishment of the programme for the training of bilingual teachers in Peruvian Amazonia. This programme is offered at the Higher Teachers' Training Institute, under an agreement between the Ministry of Education and the Interethnic Association of Peruvian Amazonia (AIDESEP), which recruits young people from very different indigenous peoples who are nominated by the federations. In addition, periodic training of unqualified teachers is undertaken in various communities during the vacations. It has also proved possible to get indigenous teachers into positions in area education authorities, so that the official system is better disposed towards the communities.

III. LEGISLATIVE, JUDICIAL AND ADMINISTRATIVE MEASURES RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

Legal framework

17. The domestic legislation relating to article 2 is as follows:

(a) Constitution:

Article 2

Every person has the right:

...

Para. 2. To equality before the law. No one may be discriminated against on account of origin, race, sex, language, religion, opinion, economic status or any other condition;

...

Para. 13. To form associations and to set up foundations and various forms of non-profit-making juridical organizations without prior authorization and in accordance with the law. They may not be dissolved by administrative decree;

...

Para. 19. To ethnic and cultural identity. The State recognizes and protects the ethnic and cultural diversity of the nation.

Every Peruvian has the right to use his own language before any authority through an interpreter. Foreigners have the same right when called upon to appear before any authority.

Article 26

In labour relations the following principles are applied:

Para. 1. Equal opportunity without discrimination.

Article 89

The peasant and indigenous communities have legal existence and are juridical persons.

They are autonomous in their organization, in their community work and in the use and free disposition of their land, and also in economic and administrative affairs, within the framework established by law. The ownership of their land is imprescriptible, unless it is relinquished (article 88 of the Constitution: land which is relinquished in accordance with legal procedure becomes the property of the State, which can put it up for sale). The State respects the cultural identity of peasant and indigenous communities.

Article 161

The Office of the Ombudsman is independent. Public bodies are obliged to cooperate with the Office of the Ombudsman when it so requires.

Article 162

It is the duty of the Office of the Ombudsman to defend the constitutional and fundamental rights of the individual and the community, and to supervise the performance of the duties of State administration and the provision of public services to citizens.

(b) Habeas Corpus and Amparo Act

Article 24

An action for amparo may be brought in defence of the following rights:

...

Para. 2. Not to be discriminated against in any way on grounds of sex, race, religion, opinion or language.

...

Para. 9. Of association.

(c) Civil Code

Article 80

An association is an organization of natural or juridical persons, or both, which through joint activity pursues a non-profit-making purpose.

Article 96

The Public Prosecutor's Department may apply through the courts for the dissolution of an association whose activities or purposes are or turn out to be contrary to public order or morals.

(d) Single Uniform Text of the Code of Civil Procedure

Article VI

The judge shall make sure that no inequality between the persons based on sex, race, religion, language or social, political or economic status affects the course or result of the proceedings.

(e) Children's and Adolescents' Code

Article IV

This Code shall apply to all children and adolescents living on Peruvian territory without any distinction on grounds of race, colour, sex, language, religion, opinion, politics, nationality, social origin, economic position, ethnic origin, physical or mental handicap, or any other status of their own or of their parents or of those responsible for them.

Article IX

The State shall guarantee a system for the specialized administration of justice for children and adolescents. Cases to be dealt with by judicial or administrative proceedings in which children or adolescents are involved shall be treated as human problems. When cases involve children or adolescents belonging to ethnic groups or native or indigenous communities, their practices and customs shall be observed, in addition to the principles embodied in this Code, and as far as possible the authorities of the community to which they belong shall be consulted.

Article XV

The State shall ensure that basic education covers:

...

(d) Respect for the pupils' parents, for their own cultural identity, for their language, and for the values of the nation and those of their peoples and of different cultures;

(e) Preparation for a responsible life in a free society, in a spirit of solidarity, understanding, peace, tolerance, equality between the sexes, and friendship among peoples and ethnic, national and religious groups.

(f) Code of Penal Execution

Article V

The prison regime shall be applied with respect for those rights of the inmate that are not affected by the sentence. Any discrimination of a racial, social, political, religious, economic, cultural or other nature shall be prohibited.

(g) Public Health Code

Article 84

At officially authorized cemeteries, burial shall be given to corpses whatever the nationality, race, status or creed of the person before he died.

(h) Act No. 26,772

The Act states that offers of employment and access to educational media may not contain requirements constituting discrimination, or abrogation or modification of equal opportunity or treatment.

(i) Employment Promotion Act

Article 1

National employment policy is constituted by a body of normative instruments designed to promote, in conformity with articles 42, 48 and 130 of the Constitution, a system of equal opportunities in employment guaranteeing all persons access to a useful occupation that will protect them against unemployment and underemployment in any of their forms.

Article 62

Any dismissal shall be null and void if it is motivated by:

...

(d) Discrimination on grounds of sex, race, religion, opinion or language.

Article 63

The following are hostile acts equivalent to dismissal:

...

(f) Acts of discrimination on grounds of sex, race, religion, opinion or language.

(j) General Rules of the Private Pension Fund System: Regulations governing Organization and Functions

Article 68

The practical procedure for collecting contributions by persons belonging to the private pension system shall be conducted by banking or financial institutions operating in Peru or by the pension fund administrators' own agencies.

In cases where contributions are collected by banking or financial institutions on behalf of the pension fund administrator, the administrator and the collecting institution shall sign an agreement on the matter, submitting a copy of it to the supervisory body within three days of its signature.

Such agreements shall specify the terms and periods for their application and shall contain at least the following provisions:

...

(h) The obligation to avoid preferential treatment and, in general, any kind of discrimination benefiting some members or employers to the detriment of others in performing the task of collection.

(k) General Act on Cooperatives

Article 5

Every cooperative has the duty to:

...

2. Comply with the following basic rules:

...

2.2 Recognize the equal rights and obligations of all members, without any discrimination.

(1) Act relating to the Conditions governing the Civil Service and the Public Sector

Article 3

Civil servants are in the service of the nation. For that reason they shall:

(a) Perform public service with the aim of promoting the country's national development, bearing in mind the fact that it transcends Governments' terms of office;

(b) Subordinate private interest to the common interest and the duties of the service;

...

(d) Perform their functions with honesty, efficiency, industry and dedication.

Article 4

The civil service is permanent and is governed by the principles of:

(a) Equal opportunity;

...

(d) Fair and equitable remuneration regulated by a single standardized system.

Article 21

Civil servants have the following obligations:

(a) To perform personally and diligently the duties required by public service;

...

(e) To treat the public in general, their superiors and their colleagues in a proper and trustworthy manner.

Article 24

The following are rights of career civil servants:

(a) To pursue a civil service career on the basis of merit, without political, religious, economic, racial, sexual or any other kind of discrimination.

(m) Civil Service Regulations

Article 99

A civil servant is entitled to pursue his career on the basis of his professional qualifications, without being subject to any discrimination.

Article 121

In granting rights and benefits, public bodies shall not discriminate between civil servants who are members of trade unions and those who are not.

(n) Office of the Ombudsman (Organization) Act

Article 1

The Office of the Ombudsman is responsible for safeguarding the constitutional and fundamental rights of the individual and the community, and for supervising fulfilment of the duties of the State administration and the performance of public services.

Article 9

In discharging his functions, the Ombudsman is empowered:

1. To initiate and prosecute, ex officio or on application, any investigation leading to the elucidation of those acts and decisions of the administration and its officials which, involving the unlawful, deficient, irregular, dilatory, abusive, excessive, arbitrary or negligent exercise of their functions, affect the full realization of the constitutional and fundamental rights of the individual and the community.

The powers of the Ombudsman cover the entire ambit of public administration.

When the Ombudsman's activities are undertaken in connection with services performed by individuals under an enabling administrative act, the Ombudsman may further urge the competent administrative authorities to exercise their powers of inspection and sanction;

2. To bring an unconstitutionality action before the Constitutional Court against any provisions having the rank of law referred to in article 200 (4) of the Constitution, and to file for habeas corpus, amparo,

habeas data, public right of action and action for compliance, in defence of the constitutional and fundamental rights of the individual and of the community.

He is also qualified or empowered to intervene in habeas corpus proceedings in order to assist in the defence of the injured party;

3. To initiate, or to participate ex officio or on application in, any administrative procedure on behalf of a person or group of persons for the defence of the constitutional and fundamental rights of the individual and the community;

...

5. To promote the signature, ratification and effective dissemination of, and accession to, international human rights treaties;

...

7. To issue the regulations required to discharge the functions of the Office of the Ombudsman and any other supplementary provisions for processing complaints which in his judgement require immediate action.

Article 10

Any natural or juridical person may file a complaint with the Ombudsman, individually or collectively, with no restriction of any kind. For this purpose none of the following shall constitute an impediment: nationality, sex, minority of age, residence, legal incapacity of the plaintiff, his internment in a social rehabilitation or detention centre, school, hospital or clinic, or in general, any special relationship of de facto or de jure subjection to or dependence on a third person or the administration.

Article 15

The Ombudsman's activities shall not be suspended when Congress is in recess, has been dissolved or has completed its mandate.

Nor may his functioning be affected by a total or partial declaration of a state of emergency, the issuance of emergency measures or any other event not expressly envisaged in either the Constitution or this Organization Act, subject to the statutory liability of the authors of such measures.

Article 16

The authorities, officials and staff of public bodies shall provide the information requested by the Ombudsman, and shall facilitate any inspections he may order of public services, National Police premises, and prisons and State entities under their control. For this purpose he may himself visit the premises in question, even without prior notice, in order to obtain necessary data or information, conduct personal interviews or examine files, reports, documents, background information and any other material he deems useful.

(o) Ministry of Justice (Organisation) Act

Article 29

The National Council for Human Rights is responsible for promoting, coordinating and advising on the protection and observance of fundamental individual rights.

(p) Ministry of Education (Organization) Act

Article 4

The Ministry of Education formulates national policy in the fields of education, culture, sports and recreation, in line with State development plans and overall policy; it supervises and evaluates their implementation; and it formulates plans and programmes on matters within its competence.

Article 13

The role of the National Institute of Culture (INC) is: to undertake cultural activities at the national level; to formulate, supervise and evaluate the country's cultural policy; and to administer, preserve and protect the nation's cultural heritage.

The INC is the central governing body of the National Museum System. As such it is responsible for promoting the organization, development, support and publicizing of the various cultural events and activities, in order to further cultural, local, regional and national cohesion and identity and to administer, preserve and protect the nation's cultural heritage.

After ratifying ILO Convention No. 169, Peru supported Agenda 21 at the United Nations Conference on Environment and Development, chapter 26 of which deals with the role of indigenous communities and environmental preservation. It also signed the Convention on Biological Diversity and other instruments intended to ensure the sustainable development of the environment. Peru is a State party to the Treaty for Amazonian Cooperation, took part in the establishment of the Special Commission on Indigenous Affairs (CEAIA), and has signed various agreements on protecting the lands and promoting the development of the indigenous peoples of the Amazon. Lima is currently the headquarters of the Treaty's provisional secretariat. Governmental and indigenous delegates of States parties take part in CEAIA meetings to coordinate activities and carry out projects.

Peru also supported the creation of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean at the Second Ibero-American Summit and ratified the constituent agreement, under which a delegate of the Government of Peru and a representative of the indigenous organizations participate. Peru is currently chairing the ad hoc intergovernmental working group established by the United Nations Commission on Human Rights to draft a declaration on the rights of indigenous peoples.

Within the legal framework of protection and non-discrimination, equal opportunity is established in terms of access to employment, education and

justice; likewise, businesses and institutions in both the private and public sectors must comply with the provisions of the special laws on these matters. In this regard the Ombudsman is performing an essential task in the development and aggrandizement of the Peruvian people, taking on the commitment to ensure that the laws and regulations are obeyed by the authorities.

Article 3

18. The Peruvian State is not in agreement with the racist regimes of other States and consequently condemns all related practices of segregation and discrimination, whatever their form and wherever they may exist, in conformity with the International Convention on the Suppression and Punishment of the Crime of Apartheid, to which Peru has been a party since 1978.

19. Diplomatic, economic and other relations between Peru and other States are conducted by the respective foreign ministries, which provide the necessary coordination to reach agreements that will foster a better understanding in the implementation of each country's policy.

20. Racism and racial discrimination, particularly apartheid, are crimes that violate the principles of international law, and especially the purposes and principles of the United Nations Charter, and pose a grave threat to international peace and security.

21. Apartheid, segregation and racial discrimination as they were practised in southern Africa, are inhuman acts committed for the purpose of instituting and maintaining the domination and systematic oppression of one racial group by another. Such acts seek to deny one or more members of one or more racial groups the individual's right to life and freedom by killing members of one or more racial groups; through serious violations of the physical or mental integrity, freedom or dignity of members of one or more racial groups, or by subjecting them to torture or cruel, inhuman or degrading treatment or punishment, or by means of any legislative measure intended to prevent one or more racial groups from participating in the country's political, social, economic and cultural life and to create conditions which will impede the full development of such group or groups, in particular by denying them human rights and fundamental freedoms. These rights include the right to work, the right to form recognized labour unions, the right to education, the right to leave and return to one's country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression and the right to freedom of assembly and peaceful association.

22. As part of its policy of social justice, the Peruvian Government, in article 2 (2), of the 1993 Constitution, guarantees equal treatment to all citizens, regardless of their race, origin, sex, religion, language, opinion, economic status or any other condition, and prohibits discrimination.

Article 4

Legal framework

23. The domestic legislation relating to article 4 is as follows:

(a) Constitution:

Article 1

The defence of the individual and respect for his dignity constitute the supreme purpose of society and the State.

Article 2

Every person has the right:

Paragraph 1: To life, his identity, moral, psychological and physical integrity, and his free development and well-being. From the moment of conception the individual is a subject of law wherever it is in his favour.

(b) Advertising rules for consumer protection:

Article 3

Advertisements must respect the Constitution and the law. No advertisement may encourage or foster any kind of racial, sexual, political or religious offence or discrimination.

Advertisements must not contain anything that may lead to antisocial, criminal or unlawful activities or that may appear to support, praise or encourage such activities.

(c) Civil Code:

Article 96

The Public Prosecutor's Department may make a judicial application for the dissolution of an association whose activities or purposes are, or are found to be, contrary to public order or public morals.

(d) Act relating to the Conditions governing the Civil Service and the Public Sector:

Article 21

Civil servants have the following obligations:

(a) To perform personally and diligently, the duties required by public service;

...

(e) To treat the public in general, their superiors and their colleagues in a proper and trustworthy manner;

(e) Criminal Code:

Article 129

Anyone who, with the intention of wholly or partially destroying a national, ethnic, social or religious group, perpetrates any of the following acts shall be liable to a minimum of 20 years imprisonment:

1. Killing members of a group;

2. Causing serious bodily or mental harm to members of the group;

3. Inflicting on the group conditions of existence designed to bring about its complete or partial physical destruction;

4. Measures designed to prevent births within the group;

5. Forcibly transferring children to another group.

Article 317

Anyone who forms part of a group of two or more persons aimed at committing offences shall be liable to between three and six years' imprisonment simply for having belonged to the group.

If the purpose of the group is to commit the crime of genocide, crimes infringing public security and peace, or crimes against the State and national defence or against the public authorities and constitutional order, the sentence shall be not less than eight years, with 180 to 365 days' fine and disqualification, in conformity with article 36, paragraphs 1, 2 and 4.

Article 36

Depending on the sentence, disqualification shall entail:

1. Deprivation of the function, post or assignment held by the convicted person, even if he was elected to it;

2. Disqualification from obtaining any mandate, post, job or assignment of a public nature;

...

4. Disqualification, either on his own account or through a third party, from engaging in any profession, trade, craft or industry, which shall be specified in the sentence.

24. The scope of protection under article 129 of the Peruvian Criminal Code covers not only protection of the life of the individual but also his mental and physical integrity, and guarantees the survival, existence and development

of mankind. The right protected by the definition of the crime of genocide rests on humanitarian ideals: the understanding that all peoples or groups of persons, despite their differences, have the right to recognition of their human dignity and existence. This means that the classification of this crime has its basic foundation in the establishment of a legal guarantee for the protection of all national, ethnic, social or religious groups, no matter how small, taking into consideration respect for human dignity, principles which are intrinsic to every community.

25. It should be stated that the individual is not protected in a particular way but as a member of a human group.

26. Article 129 of the Criminal Code is similar to article 2 of the Convention, with obvious exceptions involving the replacement of "racial" with "social", which enables the perpetrator of genocide against any human group to be punished. The word "intentional" has been deleted from paragraph 3 and the wording has been changed in paragraph 5 in order to make the text read better and for technical legal reasons.

Article 5

Legal framework

Fundamental rights

27. All citizens of Peru are guaranteed fundamental rights, with no discrimination of any kind. Thus under article 2, paragraph 2, of the 1993 Constitution, every person has the right to equality before the law. No one may be discriminated against on grounds of origin, race, sex, language, religion, opinion, economic status or on any other consideration.

28. Personal freedom and security, to which every person is entitled, are established under article 2, paragraph 24, as follows:

(a) No one is obliged to do anything not ordered by the law, nor prevented from doing what the law does not prohibit;

(b) No form of personal restriction is allowed, save in the cases provided by law; slavery, servitude and traffic in human beings in any form whatsoever are prohibited;

(c) There is no imprisonment for debt; this principle does not restrict court orders for non-fulfilment of maintenance ligations;

(d) No one shall be charged or sentenced for an act or omission which, at the time it was committed, had not previously been expressly and unequivocally defined in law as a punishable offence; nor may he be subjected to a penalty not established by law;

(e) Every person is considered innocent for as long as his guilt has not been established by a court;

(f) No one may be arrested without a written court order including a reason given by a judge or by the police authorities in a case of flagrante delicto. The person arrested must be placed at the disposal of the competent court within 24 hours or within the period required to travel the necessary distance. These time-limits do not apply to cases of terrorism, espionage or illegal drug-trafficking. In such cases, the police authorities may effect the pre-trial detention of the alleged culprits for a period of no more than 15 calendar days. They are required to give an account of their actions to the Public Prosecutor and the judge, who may assume jurisdiction before the expiry of this period;

(g) No one may be held incommunicado except in a case essential for the elucidation of an offence, and in the form and for the time stipulated by law. The authorities are obliged, subject to incurring liability, to report without delay and in writing the place where the detainee is being held;

(h) No one may be subjected to moral pressure or mental or physical violence or to torture or inhuman or degrading treatment. Anyone may immediately call for the medical examination of an injured party or a person prevented from applying to the authorities himself. Statements obtained by means of violence are invalid. Any persons who use such a statement incur liability.

29. With regard to the right to equal participation, article 2, paragraph 17, of the Constitution provides that every person has the right to participate, individually or collectively, in the nation's political, economic, social and cultural life. Under the law, citizens have the right to elect, remove or dismiss authorities, the right to initiate legislation and the right to call for a referendum.

30. The political rights enshrined by the present Constitution are as follows: the right to participate in public affairs through referendums; the right to initiate legislation; and the right to remove or dismiss authorities and demand an account of their actions. Peruvians also have the right to stand for election and to freely elect their representatives in accordance with the conditions and procedures laid down by an organizational act. It is the right and duty of citizens to participate in local government. The law regulates and promotes the direct and indirect mechanisms for their participation. All citizens with legal capacity have the right to vote.

31. In the matter of civil rights, the 1993 Constitution provides that everyone has the following rights:

(a) To freedom of conscience and religion, individually or collectively. There shall be no persecution on grounds of ideas or beliefs. No one may be prosecuted for his opinions. The public exercise of any faith is not subject to restriction, so long as it does not offend morals or disrupt the public order (art. 2, para. 3);

(b) To the freedoms of information, opinion, expression and dissemination of ideas - orally, in writing, by visual means or through any mass medium - without prior authorization, censorship or impediment of any kind, subject to statutory liability. Offences committed through books, the

press or other media are detailed in the Criminal Code and come under the jurisdiction of the ordinary courts. Any measure which suspends or closes down a publication or impedes its free circulation also constitutes an offence. The rights to report information and to express an opinion include the right to establish media (art. 2, para. 4);

(c) To choose one's place of residence and to travel through, leave and enter national territory with no restrictions other than those imposed for reasons of public health, by judicial warrant or pursuant to the Aliens Act (art. 2, para. 11);

(d) To assemble peacefully without weapons. Meetings in private or public places do not require prior notice. Meetings convened in public squares and thoroughfares require prior notification to the authorities, which may prohibit them only on proven grounds of public health or security (art. 2, para. 12);

(e) To join and establish foundations and various types of non-profit organization, without prior authorization and in accordance with the law. They may not be dissolved by administrative decision (art. 2, para. 13);

(f) To own property and to inherit (art. 2, para. 16);

(g) To a nationality. No one may be stripped of his nationality, and no one may be deprived of the right to obtain or renew his passport within or outside the country (art. 2, para. 21).

Right to own property

32. With regard to the right of members of the indigenous communities to ownership of their lands, articles 88 and 89 of the Constitution, relating to the agrarian system and the peasant and indigenous communities, provide that the State shall give priority to agricultural development, and guarantees the right to own land individually, collectively or by any other form of association. The peasant and indigenous communities enjoy legal status and are juridical persons. They enjoy autonomy in respect of their organization, communal work, and the use and free disposition of their lands, as well as in economic and administrative matters, within the framework established by law. Ownership of their lands is imprescriptible, and the State respects their cultural identity.

Protection against racial discrimination in the right to housing

33. Chapter I of the Peruvian Constitution, relating to the fundamental rights of the individual provides in article 1 that "The protection of the human person and respect for his dignity are the supreme goal of society," by which it means the State's role in promoting and encouraging respect for the dignity of the individual. This provision is supplemented by article 2, paragraph 2, which stipulates that "Every person has the right to equality before the law", and that no one, whether he be a national or a foreigner may be discriminated against on account of origin, race, language, religion, economic status or any other condition. This is a peremptory provision

through which the Constitution recognizes the universal principle of equality between all human beings and prohibits intolerance and discrimination on grounds which distinguish a minority.

34. The housing problem forms part of the country's development problem, and includes factors ranging from inadequate land development and distribution of human settlements to the characteristics of particular dwellings and their surroundings.

35. Population trends, including migration from rural to urban areas, from the sierra and the jungle to the coast, and from the sierra to the jungle, have been focusing on those cities with a fairly lively economy, generating greater demand for houses, urban services and employment. The growing magnitude of this demand explains the scarcity of housing in these cities and the various ways in which people's creativity has manifested itself in the search for solutions.

36. During the period 1980-1990, the Peruvian Government promoted a project for the rapid construction of basic dwellings for low-income residents in Lima and the departmental capitals, under the aegis of the National Housing Fund (FONAVI), which was at that time subordinate to the Ministry of Housing and Construction.

37. From 1992 onwards the new Government entrusted the management of FONAVI to the Ministry of the Presidency, in order to give fresh impetus to implementation of the Fund's targets, including basic drinking water services, basic sewerage, and the electrification of peripheral urban areas in Lima and other cities. The understanding was that the right to housing should be understood to comprise not only construction but also the installation of basic services connected to housing, as means of enhancing human dignity. Workers in the State sector who make contributions to FONAVI for a set period of years are eligible for the award of new housing built by the Government; and when the State carries out social development policies, installing basic services (water, sewerage and electrification), it focuses then on areas with low or medium socio-economic conditions.

38. With regard to ownership of new dwellings, it should by no means be inferred that any discrimination exists on ethnic grounds, inasmuch as housing awards are made on the basis of the period for which a State worker has contributed to FONAVI; an additional condition is that he or she should not already be a homeowner. All workers who fulfil these requirements are entered in a public draw in which properties are awarded at random, without any bias whatsoever, to successful State workers who have signed up for the scheme.

39. The Government has likewise been concerned to extend coverage to as much territory, as possible especially the rural and indigenous populations furthest from the cities in the provinces.

40. In Peru, there is no need for the State to enact a specific law to deal with possible discrimination with regard to home ownership which sometimes occurs in certain countries where established racial minorities find themselves affected by government policies on home ownership. Housing is in fact a major element in the field of human needs. For this reason, the

Peruvian Government does everything possible to ensure that more and more Peruvians are able to own a home. In the major cities today there are few unoccupied dwellings, possibly owing to the housing shortage and to the high population density in these areas due to migration.

41. Likewise, it should be pointed out that the population residing in the so-called marginal urban areas in the major cities have access to loans for construction, expansion or improvement of their homes. Similarly, the Banco de Materiales grants loans for building materials to people living in human settlements, housing cooperatives and popular housing associations, extending its support and aid to settlers in the sierra and jungle regions.

Measures adopted for the protection of the Convention

42. Taking stock of the measures adopted to date by the Peruvian Government for the protection of human rights, we can say that they have been rather advantageous for the country in general. Proof of this lies in the measures adopted to eradicate the scourge of subversive activities which Peru had been suffering for more than a decade. This problem is currently being totally eradicated. These measures likewise have relevance for the fulfilment of the provisions of the Convention and Peru, as a State party, confirms and maintains its position of ensuring respect for human rights which are affected by racial discrimination.

43. With reference to the legislative, judicial and administrative measures adopted by the Government in fulfilment of article 9 of the Convention, we can state that these measures have been conducive to the welfare of the Peruvian people, albeit with certain limitations, which we believe we are rectifying en route to achieving the normal development of the nation, without differentiation on grounds of race, culture, language, religion, etc.

44. The peacemaking process now under way in Peru is partly reflected in figures showing that accusations of violation of human rights are increasingly infrequent. Subversive activity, which has caused violence, destruction and the deaths of more than 27,000 Peruvians in urban and rural areas and in the peasant and indigenous communities, has diminished significantly in the capital, where the downward trend continued in 1995 with 44.3 per cent fewer subversive acts being carried out than in 1994. At the regional level, the location of subversive acts is changing; most have taken place in the sierra, followed by the coast and jungle. The Government still maintains its resolve to safeguard the civil population from this scourge.

45. The importance of education lies in providing the individual with the necessary means for personal fulfilment and offering society the contribution of qualified human resources, a necessary element in achieving national development. For this reason, the Government places emphasis on education - primary and secondary education, which is mainly free, and university education, which is also free in the national universities.

46. According to figures from the Educational Statistics Unit of the Ministry of Education, in 1995, 7,788,631 pupils were enrolled in schools, an increase of 174,262 on the previous year. The number of pupils receiving an

education outside school increased to 15,190. Approximately 82.9 per cent of enrolled pupils attend State schools while 17.1 per cent attend secular or religious schools in the private sector.

47. Regarding health, in the developing countries, including Peru, mortality rates have in general been decreasing significantly over the past few decades. For the period 1995 to 2000 the average life expectancy of the Peruvian population is 68.3 years. According to estimates by the Ministry of Health, in 1995 there were 453 hospitals at the national level, of which 33.1 per cent belonged to the Ministry of Health and 15.2 per cent to the Peruvian Social Security Institute; 46.8 per cent were in the private sector and 4.9 per cent belonged to the country's police and armed forces. There were 1,462 health centres and 5,015 health posts, reaching out into the remotest areas of the country to provide health care to the inhabitants of the peasant and indigenous communities.

48. With regard to work and employment, it is necessary to combat unemployment, which is an ever-present phenomenon to a greater or lesser extent throughout society. The increase in the numbers of working women which has occurred over the past few years will continue. Private investment should generate more employment for the unemployed, and somewhat decrease the poverty which still mostly affects the marginal sectors.

49. Finally, it should be pointed out that, through the various governmental and non-governmental organizations and institutions, the Peruvian population plays an active proactive role in alleviating poverty and giving support during emergency situations and times of danger. Through these bodies Peruvians participate actively, requesting aid in such areas as food, security, advancement and skills training. It should be added that Peruvian society reaffirms its democratic nature by participating, through electoral suffrage, in the election and decision-making levels of national and local government.

Article 6

Violation of human rights and fundamental freedoms

50. All democratic regimes are occasionally confronted with exceptional situations which seriously compromise the functioning of legal and political institutions, the stability of the State and the development of social relations; in such cases it is vital that the executive power take exceptional decisions to address the crisis and restore internal order.

51. In this connection, the declaration of states of emergency in Peru is a power established at the constitutional level (Constitution, art. 200). It operates in complete harmony with the application of the major international instruments, such as the American Convention on Human Rights, article 27 (1) of which permits the declaration of states of emergency when the security of a State so requires.

52. The legal order of the Peruvian State guarantees the rights of the person during states of emergency establishing that the habeas corpus actions shall not be suspended during states of emergency (Constitution, art. 200).

There are provisions in force which regulate the application of these states of emergency by the security forces, based on respect for and realization of human rights, guaranteeing action by the Public Prosecutor's Department, the Judiciary and the International Committee of the Red Cross. In particular they cover the authority of public prosecutors to enter military facilities and detention centres in order to verify the condition of detainees or persons reported missing, obliging the Ministries of Defence and the Interior to grant them the facilities and guarantees for carrying out their task.

53. It should be underlined that in Peru states of emergency were declared within the constitutional framework expressly permitting them in response to objective situations of terrorist violence which affected specific areas of the country, and with the aim of protecting national security and the rights of citizens in the best possible way, within the framework of national peacemaking. The stability and peace that Peru has regained are due, inter alia, to the success of its anti-subversion strategy, the results of which are plain to see; one factor in this success was the imposition of states of emergency.

54. The achievements of peacemaking were fundamentally due to the fact that the population unconditionally backed the cause of the security forces and formed an alliance that the terrorist criminals were never able to overcome. Proof of this lies in the fact that many people in the interior of the country are calling for military bases to be established there, even though the state of emergency has been lifted.

55. The internal order situation in Peru is gradually returning to normal, and the declaration or extension of states of emergency is therefore being restricted to certain areas of the country where the peace process has yet to be completed.

56. During 1996 no new states of emergency were declared; this exceptional measure was extended only in a few areas where outbreaks of disturbance still occasionally occur. Thus there is no "continuous imposition of a state of emergency" on Peruvian territory.

57. The Inter-American Court of Human Rights has expressed the view that the realization of human rights during states of emergency is not guaranteed by institutions of constitutional rank such as the Public Prosecutor's Department or the Ombudsman's Office. Their powers are not in fact interrupted or suspended during the period when a state of emergency is in force.

Prosecution of human rights violations by soldiers and paramilitary groups

58. Military justice is an autonomous and independent authority which exists by constitutional mandate, and equally does not neglect the fulfilment of its fundamental aim, which is to protect the values, morality, discipline and order of personnel in the Peruvian armed forces and National Police.

59. In the case of any offences committed in the course of duty by members of the armed forces or National Police, the matter may be submitted to the military courts and dealt with under the Military Code of Justice. In the

case of offences not committed in the course of duty, members of the armed forces are liable to prosecution in the ordinary courts under the Criminal Code.

60. The competence of the military to try civilians in exceptional circumstances is based on the nature of the offence: breaches of the Military Service Act and the crime of treason. It should nevertheless be emphasized that, as recognized in the Constitution, military justice is also subject to the principles and guarantees of the judicial function, as are its functional independence, the plurality of instances, due process and not being deprived of the right to defence, inter alia.

61. The 1996 annual report of the Inter-American Court of Human Rights does not consider objective facts in the practice of military justice, such as the large number of trials of civilians in which the defendants were acquitted or the registration of only six military justice cases in which the ad hoc commission established by Act No. 26,555 opted for pardon. Nor did the Inter-American Court consider, despite referring to the terrorist attack on the Japanese Embassy in December 1996, that during the past year serious acts characterized as treason have been committed; military justice is considered necessary in order to try the individuals responsible for these crimes.

62. It should be emphasized that the Peruvian State, within the framework of its anti-terrorist strategy and the defence of democratic institutions, has been duly punishing the excesses of certain members of the security forces suspected of having violated human rights. Over the past seven years, 108 officers and 453 non-commissioned officers in the security forces have been punished; of these 28 officers and 151 NCOs have received prison sentences. The high rank of the military personnel convicted and the severity of the penalties imposed demonstrate the Government's desire not to leave these acts unpunished. In this way, the Peruvian State demonstrates its desire to collaborate and cooperate with all the institutions and bodies of the United Nations and the Organization of American States for the protection and promotion of human rights, particularly with regard to the rapid processing of complaints received.

63. Statistics for 1996 provided by the Public Prosecutor's Department show that the number of complaints of suspected human rights violations has noticeably decreased, and that in the few cases which do occur, those responsible for such acts have been punished, in conformity with the normal procedures. This objective fact, which has been recognized by the human rights organizations, has also not fully been taken into account in the 1996 annual report of the Inter-American Court.

64. Since 1992 Peru's criminal legislation has recognized the offence of enforced disappearance of persons (Decree-Law No. 25,592), which establishes penalties for any "official or public servant who deprives a person of his or her freedom, by ordering or carrying out actions which result in the duly verified disappearance of that person". The existence of this provision demonstrates the State's desire to severely punish members of the security corps who commit violations of human rights. The obligatory participation of the Public Prosector's Department in the investigation of these acts and the setting-up, with the aid of international cooperation, of the National

Register of Detainees demonstrate the Government's efforts to eradicate such acts, which constitute a serious obstacle to efforts to achieve success in the national peace process.

65. Since 1992, a new anti-terrorist strategy has been drawn up, directed towards making peace throughout the country, on the basis of respect for human rights. This strategy required a legal framework which would enable it to adequately deal with the situation of extreme terrorist violence which existed at that time. A fundamental part of this strategy was the exceptional criminal legislation which established the offence of aggravated terrorism or treason, which falls within the jurisdiction of the military courts. The competence and powers of the military courts are incontrovertibly established in the Constitution, and in particular, cases in which, exceptionally, civilians can be tried.

66. That it became necessary for military courts to participate in terrorist trials was due to the limitations of the ordinary courts in the face of the terrorists' methods of intimidation (assassination of judges and their relatives). The aim was to impart justice appropriately and to punish effectively those persons who perpetrate acts of terrorism in Peru. It was therefore necessary to refer cases of aggravated terrorism (treason) to the military courts, whose special characteristics mean that they constitute an effective internal security apparatus. All this makes it possible to try terrorist criminals appropriately.

67. With the aim of more effectively fulfilling its commitment to the protection of the fundamental rights of the indigenous communities, Peru recently signed a treaty with the Amazonian Centre for Anthropology and Practical Application (CAAAP) and the International Labour Organization (ILO). Under this treaty, and with financing from the United States Agency for International Development (USAID), a special programme for the protection of indigenous communities has been launched. Its functions include investigating and resolving complaints of violations of the rights of indigenous peoples and native communities.

Article 7

Education for the peasant and indigenous communities

68. Peru has very clear constitutional provisions which can be used as a basis for adopting a special regime for indigenous education, in accordance with the culture of these peoples and communities.

69. The General Education Act (No. 23,384) establishes how, without neglecting its national affirmation aims, education should take into consideration the particular character of the various cultures, and give priority attention to marginalized sectors, border zones, rural areas, population groups where indigenous languages predominate and other similar situations. The Indigenous Communities Act also commits the State to "full education and ongoing training for the members of the indigenous communities, both in community organization and administration and with regard to

technical, agricultural and forestry skills", and to "give preference to indigenous professionals and technicians in filling public posts within the communities".

70. The Directorate-General for Bilingual Education, established in 1973 and attached to the Ministry of Education, announced some innovative policy guidelines which augured an important change in the educational model used with indigenous peoples. Despite the current constitutional provisions, the Directorate-General has been dissolved and replaced by the Intercultural Bilingual Education Unit, which forms part of the Pre-school and Primary Directorate, at a lower level of the ministerial structure.

71. Indigenous organizations and some private bodies have made valuable contributions to indigenous education, especially in skills training for young people. For example, the experiences of the Intercultural Bilingual Education Programme in Alto Napo, the Summer Institute of Linguistics, the CAAAP Intercultural Bilingual Education Project in Bajo Tambo, the Environmental Education Project in Manú National Park and the Loreto Pedagogical Institute (run by the Ministry of Education), inter alia, should be highlighted.

72. Likewise, the Peruvian State, in adopting ILO Convention No. 169, assumed responsibility for carrying out special work in the field of education with the indigenous populations, agreed with them in accordance with their cultural characteristics, their history and their actual needs. One fundamental principle established by this instrument is that indigenous children should be taught to read and write in their mother tongue.

73. One aim of educating indigenous children should be to give them the general knowledge and skills which will help them to participate fully and on an equal footing in the life of their own community and the national community. Nevertheless, no changes in national laws or current programmes have yet been drawn up or adopted in accordance with these commitments.

74. The Constitution establishes as mandatory the teaching of the contents of the Constitution. It also stipulates that ethical and civic instruction should be given throughout the educational process, civilian or military, with the aim of inculcating respect for one's own identity and the principle of treating people well psychologically and physically.

75. One of the provisions of the General Education Act is the prohibition of any form of discrimination on grounds of sex, race, religious belief, political affiliation, language, occupation, or civil, social or economic status of the pupil or his parents. The Peruvian Government thus considers education a useful weapon in combating racial discrimination, particularly if, as is the case in Peru, discrimination occurs not on ethnic or racial grounds, but is due to factors arising from uneven development within Peruvian society.

76. In this connection, four points should be highlighted: firstly, the substantial level of school construction; secondly, the strengthening of education in the most disadvantaged sectors through free schooling, school subsidies and adaptation of the curriculum to the objective needs of the

community; thirdly, a substantial human rights education programme within the curriculum; and finally, a considerable effort in the publication of documents relating to indigenous peoples.

77. The education plan is drawn up by the State, and is focused on decentralization and ensuring that no one's progress is limited for any reason. In this way, the State's concern to guarantee access to education for all Peruvians without discrimination of any kind should be recognized. In other words, it engages in no discriminatory practice; on the contrary, it seeks to help pupils, without exclusion of any kind, through its encouragement.

78. In the same way, it promotes the study and knowledge of aboriginal languages and, in the case of the indigenous communities, the provision of primary education in their own dialect or language. This is provided for in chapter 11 of the Peruvian Constitution.

79. Chapter 1 of the General Education Act (No. 23,384) contains the bases of education and reiterates the social and democratic nature of education. In its turn, it encourages knowledge of human rights, leading to greater tolerance and friendship between nations and diverse racial and ethnic groups.

80. With regard to vocational training, the State offers all citizens the right to choose the profession they desire, with no discrimination of any kind, and promotes the technical qualification of workers, providing incentives and seeking to improve productivity. It also promotes social welfare and thereby contributes to national development and progress. The Government thus encourages vocational and higher technical training, opening new training centres at which education is completely free, and condemning unreservedly any policy or ideology directed at fomenting racial hatred and ethnic cleansing in all their forms, which are incompatible with human rights and universally recognized fundamental freedoms.

81. For this reason, foreigners who enter Peru enjoy the same rights as Peruvians, with no kind of restriction or limitation; the media fulfil their essential role in promoting the interests of immigrants.

82. Refugees in Peru are protected by national and international law and will remain in the place to which they are assigned. This will be an area suitable to set up home in accordance with their status, for the necessary period until the State of origin withdraws its demand for their return or definitive solution to the particular case in question is arrived at.

Protection of ethnic and cultural identity

83. The Constitution, in article 2, paragraph 19, recognizes that all persons have the right to their ethnic and cultural identity. The State recognizes and protects the ethnic and cultural diversity of the Nation, giving every Peruvian the right to use his own language before any authority through an interpreter and, giving foreigners the same right when called to appear before any authority. Respect for cultural identity is guaranteed.

84. In addition to recognizing the multicultural and multi-ethnic character of the nation, article 89 of the 1993 Constitution stipulates that the State recognizes the legal existence of the peasant and indigenous communities, and grants them the status of legal persons. Moreover, bilingual and intercultural education is promoted; in addition to Spanish, Quechua, Aymara and other aboriginal languages are accepted as official languages in the areas where their use predominates. The authorities of the peasant and indigenous communities are granted the authority to exercise jurisdictional functions within their territory, in conformity with customary law.

85. Similarly, in 1994 the Peruvian State ratified ILO Convention No. 169, thus incorporating into its legal system this instrument which makes fundamental contributions to the treatment of Peru as an ethnically and culturally diverse country. The text of the Convention represents explicit acceptance of the ethnic and cultural diversity of the country as a positive and highly significant element of nationality. Article 2 gives Governments responsibility for ensuring that indigenous people benefit "on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population", for promoting "the full realization of the social, economic and cultural rights of these peoples, with respect for their social and cultural identity, their customs and traditions, and their institutions". In addition, article 3 establishes the clear option for the indigenous peoples of enjoying "the full measure of human rights and fundamental freedoms without hindrance or discrimination".

86. Recognition of the multicultural and multi-ethnic nature of Peru is not simply a rule or an affirmation of principle; it is also a definition of operational parameters which permit the understanding and application of the concept of sustainable development for the Amazonian indigenous peoples. Sustainable development should be understood as a dynamic process, the basis of which is the continuing relationship between ethno-cultural diversity and biological diversity.

CONCLUSIONS

87. In accordance with the laws mentioned above, it can be asserted that in Peru every individual enjoys full protection of the fundamental right not to be discriminated against on grounds of origin, race, sex, language, religion, opinion, or economic status or any other ground, it being understood that the person is a subject in law from conception until death (and that the deceased must not be discriminated against at the time of burial according to the Health Code).

88. The fundamental rights recognized by the Peruvian Constitution apply equally to persons living in urban areas and in rural areas (peasant and indigenous communities), who are moreover protected by special legislation and international treaties on human rights. The Peruvian State guarantees respect for the cultural identity of the peasant and indigenous communities in the Constitution. Likewise it encourages bilingual and intercultural education, accepting Quechua, Aymara and the other indigenous languages as official languages, in addition to Spanish, in areas where their use predominates. It

gives the authorities of the peasant and indigenous communities the right to exercise jurisdictional functions within their territory. This recognition expresses not only an assurance of the rights of the indigenous peoples of Peru to differentiation and cultural continuity, but also creates the opportunity to claim greater participation as citizens in the system of national justice administration, in accordance with the multicultural and multi-ethnic nature of Peru.